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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Albert L Jacobs, Jr., et al.,  
10 Plaintiffs,  
11 v.  
12 Wheaton Van Lines Incorporated,  
13 Defendant.  
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No. CV-17-03967-PHX-JAT

**ORDER**

15 Pending before the Court are Plaintiffs' Motion for a Temporary Restraining  
16 Order ("Motion for TRO") (Doc. 11), Plaintiffs' Motion for a Preliminary Injunction  
17 ("Motion for Preliminary Injunction") (Doc. 13), and Plaintiffs' Motion for Default  
18 Judgment (Doc. 14).<sup>1</sup> The Court now rules on the motions.

19 **I. MOTIONS FOR TRO AND PRELIMINARY INJUNCTION**

20 **A. Background**

21 On December 6, 2017, Albert Jacobs and Linda Jacobs (collectively and  
22 individually, "Plaintiffs") filed the pending Motion for TRO (Doc. 11) and Motion for  
23 Preliminary Injunction (Doc. 13) against Wheaton Van Line, Inc. ("Defendant").  
24 Plaintiffs seek a TRO and preliminary injunction to prevent Defendant from maintaining  
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27 <sup>1</sup> For any future filings, the Court directs Plaintiffs' attention to District of Arizona  
28 Local Rule Civil 7.1(b), which provides in part: "All pleadings, motions and other  
original documents filed with the Clerk shall be in a fixed-pitch type size no smaller than  
ten (10) pitch (10 letters per inch) or in a *proportional font size no smaller than 13 point*,  
including any footnotes." LRCiv 7.1(b) (emphasis added).

1 a state court action in Maricopa County Superior Court against Plaintiffs. (*See* Doc. 11 at  
2 1-2). The Maricopa County Superior Court previously set December 14, 2017 as the date  
3 for Arbitration in Defendant’s state court claim against Plaintiffs. (*See id.* at 1).

#### 4 **B. Legal Standard**

5 The test for a TRO is the same test as for a preliminary injunction. *See, e.g., Ron*  
6 *Barber for Cong. v. Bennett*, CV-14-02489-TUC-CKJ, 2014 WL 6694451, at \*2 (D.  
7 Ariz. Nov. 27, 2014). Under Rule 65(b) of the Federal Rules of Civil Procedure  
8 (“FRCP”), plaintiffs seeking a TRO or a preliminary injunction must establish: (1) a  
9 likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of  
10 preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in  
11 the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365,  
12 374, 172 L. Ed. 2d 249 (2008). Alternatively, the Ninth Circuit also provides that, when  
13 the latter requirements are met, “[a] preliminary injunction is appropriate when a plaintiff  
14 demonstrates . . . that serious questions going to the merits were raised and the balance of  
15 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*,  
16 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal citations and quotations omitted).

#### 17 **C. Analysis**

18 “The *Younger* abstention doctrine, as originally articulated by the Supreme Court,  
19 forbids federal courts from staying or enjoining pending state court proceedings.”  
20 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1147 (9th Cir. 2007) (internal  
21 quotations omitted) (citing *Younger v. Harris*, 401 U.S. 37, 41 (1971)); *see also* 28  
22 U.S.C. § 2283; *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S.  
23 423, 431 (1982) (“*Younger v. Harris*[], and its progeny espouse a strong federal policy  
24 against federal-court interference with pending state judicial proceedings absent  
25 extraordinary circumstances.”). Here, the Court may not intervene in the Maricopa  
26 County Superior Court proceedings referenced by Plaintiffs. As such, Plaintiffs have  
27 failed to demonstrate any likelihood of success on the merits because this Court is unable  
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1 to provide the relief Plaintiffs seek. Accordingly, Plaintiffs' Motion for TRO (Doc. 11)  
2 and Motion for Preliminary Injunction (Doc. 13) are hereby denied.<sup>2</sup>

## 3 **II. MOTION FOR DEFAULT JUDGMENT**

4 On December 6, 2017, Plaintiffs filed the pending Motion for Default Judgment  
5 (Doc. 14).

### 6 **A. Background**

7 Plaintiffs argue that "Defendant was serve[d] November 3rd[,] 2017," but  
8 Defendant failed to answer or otherwise plead to the Complaint (Doc. 1) in a timely  
9 manner. (Doc. 14 at 2). Under FRCP Rule 12, a defendant must serve an answer "within  
10 21 days after being served with the summons and complaint." Under FRCP Rule 55(a), if  
11 a properly served party fails "to plead or otherwise defend, and that failure is shown by  
12 affidavit or otherwise, the clerk must enter the party's default." In this case, Defendant  
13 did not answer or otherwise plead within 21 days of the day Defendant was purportedly  
14 served. Defendant first responded to Plaintiffs' Complaint (Doc. 1) several days after this  
15 deadline with a Motion to Dismiss (Doc. 16) filed on December 8, 2017.

### 16 **B. Legal Standard**

17 "As a general rule, default judgments are disfavored; cases should be decided  
18 upon their merits whenever reasonably possible." *Westchester Fire Ins. Co. v. Mendez*,  
19 585 F.3d 1183, 1189 (9th Cir. 2009) (citation omitted); *see also Eitel v. McCool*, 782  
20 F.2d 1470, 1472 (9th Cir. 1986) (explaining that the "strong policy underlying the  
21 Federal Rules of Civil Procedure favors decisions on the merits"). Districts courts have  
22 "broad discretion" in ruling on motions for default judgments. *Lowery v. Barcklay*, CV-  
23 12-1625-PHX-RCB, 2013 WL 2635576, at \*4 (D. Ariz. June 12, 2013); *see, e.g., Draper*  
24 *v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986) (holding that a district court did not  
25 abuse its discretion in denying a motion for default where a defendant answered late, but  
26 the plaintiff did not show prejudice from the delay); *Aldabe v. Aldabe*, 616 F.2d 1089,

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28 <sup>2</sup> The Court need not analyze the remaining elements of the *Winter* test because  
Plaintiffs failed to establish the first element and must establish all elements in order for  
their motion to succeed.

1 1092 (9th Cir. 1980) (holding that a district court did not abuse its discretion in declining  
2 to enter a default judgment in favor of a plaintiff where the plaintiff's substantive claims  
3 lacked merit). The Ninth Circuit Court of Appeals provides that a district court may look  
4 at the following factors in considering a motion for default:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits  
6 of plaintiff's substantive claim, (3) the sufficiency of the  
7 complaint, (4) the sum of money at stake in the action; (5) the  
8 possibility of a dispute concerning material facts; (6) whether  
the default was due to excusable neglect, and (7) the strong  
policy underlying the Federal Rules of Civil Procedure  
favoring decisions on the merits.

9 *Eitel*, 782 F.2d at 1471-72.

### 10 **C. Analysis**

11 Here, several factors weigh in favor of denying the instant motion. Plaintiffs have  
12 not made any showing of prejudice as a result of Defendant's failure to comply strictly  
13 with the time requirements of FRCP Rule 55(a) because Plaintiffs seek relief that this  
14 Court may not provide. *See supra* part I(C). Additionally, Plaintiffs have not shown any  
15 likelihood of success on the merits. Defendant fails to provide an excuse for its late  
16 answer, but Plaintiffs similarly fail to provide a compelling reason to overcome the strong  
17 policy preference against default. *See Eitel*, 782 F.2d at 1472. Accordingly, Plaintiffs'  
18 Motion for Default Judgment (Doc. 14) is hereby denied.

19 Plaintiffs have 30 days from the date of service of Defendant's pending Motion to  
20 Dismiss (Doc. 16)—which occurred on December 8, 2017—within which to serve and  
21 file a responsive memorandum in opposition. *See* LRCiv. 12.1(b), 56.1(d).

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1     **III.   CONCLUSION**

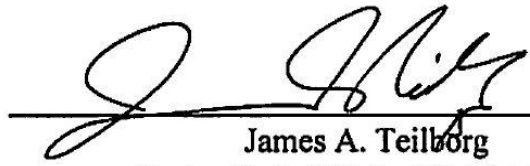
2     For the reasons set forth above,

3     **IT IS ORDERED** that Plaintiffs' Motion for TRO (Doc. 11) is **DENIED**.

4     **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Preliminary Injunction  
5     (Doc. 13) is **DENIED**.

6     **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Default Judgment (Doc.  
7     14) is **DENIED**. The Clerk of the Court shall not enter judgment at this time.

8     Dated this 13th day of December, 2017.

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13     James A. Teilborg  
14     Senior United States District Judge  
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